LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 3 1961
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 200

JACK P. F. GREMILLION, ET AL.,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANTS.

HON. JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
2201 State Capitol Building,
Baton Rouge, Louisiana;
CARROLL BUCK,
First Assistant Attorney General;
M. E. CULLIGAN,
Assistant Attorney General;
GEORGE M. PONDER,
Assistant Attorney General,
Attorneys for Appellants.

Montgomery & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

SUBJECT INDEX.

	Page
STATEMENT AS TO JURISDICTION	1
OPINION BELOW	2
JURISDICTION	3
STATUTES INVOLVED	3
QUESTIONS PRESENTED	3
STATEMENT OF THE CASE	5
THE QUESTIONS PRESENTED ARE SUBSTANTIAL:	
A. The Department of Justice of the United States Is Not Authorized to Bring This Suit	5
B. That This Is a Suit Against the State of Louisiana and Prohibited by the Federal Constitution	6
C. The United States Was Not Entitled to the Relief Sought	7
D. The Relief Sought Herein Was Premature	13
CONCLUSION	14
PROOF OF SERVICE	15
APPENDIX "A"	17
APPENDIX "B"	27
APPENDIX "C"	30

Page

Authorities Cited:

Ackerman v. International Longshoremen's & W. Union, 187 F. (2d) 860, at page 868 10

Bush, et al., v. Orleans Parish School Board, et al., E. D. La., 138 F. Supp. 337, affirmed 242 F. (2d) 156 5

Douglas v. City of Jeannette, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 11

Foley v. Ham, 169 P. 183, 102 Kan. 66 9

Kent v. The City of Chicago, 22 N. E. 799, 301 Ill. App. 312 9

Miscellaneous:

43 Corpus Juris Secundum at page 768, et seq. 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. ———

JACK P. F. GREMILLION, ET AL.,
Appellants,

versus

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANTS.

STATEMENT AS TO JURISDICTION.

Appellants, Jack P. F. Gremillion, Attorney General, State of Louisiana; Murphy J. Roden, Director of Public Safety, State of Louisiana, and Richard A. Dowling, District Attorney, Orleans Parish, State of Louisiana, appeal from the judgment of the United States District Court for the Eastern District of Louisiana, New Orleans Division, sitting as a three-judge court, entered on the fourth day of March, 1961, declaring unconstitu-

tional Acts 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961; and, further, enjoining enforcement of said statutes, and from otherwise interfering with the operation of the public schools for the Parish of Orleans, by the duly elected Orleans Parish School Board, pursuant to the orders of the District Court. And appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The United States District Court for the Eastern District of Louisiana, sitting as a three-judge court, on May 4, 1961, issued its opinion holding the aforesaid Act Number 3 and Act Number 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961 unconstitutional, and on the same date issued a temporary injunction restraining appellants and others from enforcing or seeking to enforce by any means the provisions of Act Number 3 and Act Number 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961. As of this date the opinion of the aforesaid District Court and the temporary injunction issued by it are unreported. Copy of said opinion and of the temporary injunction appear herein as Appendix "A." Other opinions heretofore rendered are reported in: 138 F. Supp. 336, affirmed 242 F. (2d) 156, cert. den. 354 U. S. 121; 163 F. Supp. 701, affirmed 268 F. (2d) 78, 187 F. Supp. 42.

JURISDICTION.

The jurisdiction of the Supreme Court to review the direct appeal this decision of the three-judge court is conferred by 28 U. S. Code 1253. Notice of Appeal from Judgment which was entered on May 4, 1961, was filed in that Court on May 29, 1961.

STATUTES INVOLVED.

The following statutes of the State of Louisiana were held to be unconstitutional and invalid:

Act 3 of the Second Extraordinary Session of the Louisiana Legislature for 1961 (Revised Statutes 14:119.1, Appendix "B"), and Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961 (Revised Statutes 14:122.1, Appendix "C").

QUESTIONS PRESENTED.

In declaring these Louisiana statutes, hereinabove cited, unconstitutional and invalid, and in issuing a temporary injunction restraining defendants from enforcing the provisions thereof, and from otherwise interfering in any way with the operation of the public schools in the Parish of Orleans by the Orleans Parish School Board pursuant to the orders of the District Court, the following questions are presented by this appeal.

1. Does the Court have jurisdiction over the subject matters?

2. Are these suits against the State of Louisiana?

3. Are these in fact not suits against the State of Louisiana?

4. Is not the State of Louisiana an indispensable party?

5. Is not the State of Louisiana the "real party at interest"?

6. Is Jack P. F. Gremillion, Attorney General for the State of Louisiana, a proper party defendant herein?

7. In making the Attorney General of the State of Louisiana a party defendant and enjoining him as such, has not the State of Louisiana and her citizens been denied and deprived of their rights of due process of law?

8. Are not Acts 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961 constitutional and valid?

9. Is not the United States participating herein without authority in law and equity?

10. Should not petition of the United States *Amicus Curiae* be dismissed?

11. Should not *Bush* plaintiffs' suit be dismissed for their failure to show that they are parties at interest with proper capacities to bring and sustain their suit?

12. Does not the legislation and legislative action attacked as unconstitutional herein seek to maintain the constitutional rights of the citizens of Louisiana and the United States?

13. Does not this action as presently maintained violate the constitutional rights of the citizens of Louisiana and the United States?

14. Has not the United States failed to state a claim upon which relief can be granted because of its failure to allege unconstitutionality?

STATEMENT OF THE CASE.

For the prior history of this litigation see *Bush, et al., v. Orleans Parish School Board, et al.*, E. D. La., 138 F. Supp. 337, affirmed 242 F. (2d) 156; id. 163 F. Supp. 701, affirmed 268 F. (2d) 78; id. 187 F. Supp. 42, affirmed 365 U. S. 569; id. 188 F. Supp. 916, affirmed 365 U. S. 569; id. 190 F. Supp. 861; id.

The opinion and temporary injunction appealed from were issued after hearing on motions of the United States, *amicus curiae*, for a temporary injunction restraining the enforcement of Acts 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

A. The Department of Justice of the United States Is Not Authorized to Bring This Suit.

In order to be entitled to an injunction, the complainant must be a real party at interest in the proceedings. In the present case the Department of Justice of the United States has attempted to intervene or appear as *amicus curiae* in this suit without color of authority by either statutory law or federal jurisprudence, but contends that they are in the suit as an invitee of the Court. It is a well-established principle of law that the complainant in a suit for injunction must be a member of the class which he complains is being harmed. Further, the complainant must show that he is a member of a class which will be done irreparable harm or injury in the event a restraining order is not issued. In the case of an injunction on a temporary or permanent basis, the

Court must find that members of the class are being harmed and that they do not have an adequate remedy at law. In the instant case, the Justice Department not only has no real interest in the present proceedings but has failed to show wherein they have authority to be a party to the proceedings.

This is clearly an attempt on the part of the Justice Department to intervene (where no legal authority exists) under the guise of assisting the Court in the carrying out of its decrees in other proceedings of the case entitled *Bush, et al., v. Orleans Parish School Board, et al.*, while, for all intents and purposes, the injunction sought by the Department of Justice is a new and separate action.

B. That This Is a Suit Against the State of Louisiana and Prohibited by the Federal Constitution.

At the outset of the litigation of the case, referred to as *Bush, et al., v. Orleans Parish School Board, et al.*, the District Court and the Court of Appeals held that the proceedings could not be considered as a suit against the State, and now the Department of Justice by using the subterfuge of being a friend of the Court is actually representing the original plaintiffs therein as their attorneys, and in reality is not bringing this suit in behalf of the United States of America and, for this reason, the present proceedings are in violation of the Eleventh Amendment of the Constitution of the United States.

This Court and the Court of Appeals have held on numerous occasions that they will not entertain or give

effect to any subterfuges however subtle they may be, if the purpose of a subterfuge is to deprive any one of their rights under the Federal Constitution. Appellants only ask that this same doctrine be afforded to the State of Louisiana when being sued in its sovereign capacity.

It should be further pointed out that in all of the so-called segregation cases now pending before this three-judge court and other three-judge courts wherein the United States Government has intervened or become a party to the litigation as *amicus curiae* on the invitation of the Court, that the Government itself has made the State of Louisiana a party defendant by *ex parte* orders of these courts.

If the facts of this case are viewed impartially, there can no longer remain any doubt that this is a suit against the State of Louisiana brought by citizens of Louisiana, and appellants, in all sincerity, call the Court's attention to the fact that though the United States of America is the plaintiff in name in these proceedings, that actually the issues to be resolved are disputes between the citizens of Louisiana and the State itself.

C. The United States Was Not Entitled to the Relief Sought.

The plaintiff, the Department of Justice, seeks to enjoin appellants from enforcing Acts 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature of 1961 without any showing that these Acts were enforced or used in an unconstitutional manner or that any of the class it purports to represent have suffered any irreparable injury or will any injury be suffered by the enforcement of these Acts.

"The general rule, sometimes by virtue of statutory provisions, is that an injunction will not be granted to stay criminal or quasi-criminal proceedings, whether the prosecution is for the violation of the common law or the infraction of statutes or municipal ordinances, or to stay the enforcement of orders of a board or commission. This general rule is based, in addition to other considerations, on the principle that equity is concerned only with the protection of civil and property rights, and is intended to supplement, and not usurp, the functions of the courts of law, and on the fact that the party has an adequate remedy at law by establishing as a defense to the prosecution that he did not commit the act charged, or that the statute or ordinance on which the prosecution is based is invalid, and, in case of conviction, by taking an appeal. The rule applies whether the prosecution is by indictment or by summary process, and applies to prosecutions which are merely threatened or anticipated as well as to those which have already been commenced, and also to grand jury investigations. In the absence of other circumstances justifying interference by a court of equity, the rule also applies, even though the ordinance or statute on which the prosecution is based is void, although the party seeking the injunction is not guilty of a violation of the ordinance or statute, although the complaint states no cause of action, although the municipality, under the authority of which prosecutions under an alleged void ordinance are to be instituted, and its officers proceeding therein are insolvent so that

damages cannot be recovered from them, although the fact that the fines to which the party may be subjected if found guilty amount to less than will permit an appeal, or although the statute on which the prosecution is based is not enforced against some violators."

See 43 *Corpus Juris Secundum* at page 768, *et seq.*, and authorities cited thereunder.

An extensive search of the jurisprudence reveals that the only exception to the above rule is where injunctions have been granted to protect private property rights that might be violated by some criminal or quasi-criminal statute or ordinance.

There are numerous instances where both the State and Federal Courts have held that they cannot enjoin the enforcement of a criminal statute because as a matter of public policy the Court should not interfere with the rights of the public when seeking the enforcement of law.

See *Foley v. Ham*, 169 P. 183, 102 Kan. 66.

The fundamental reason for the rule that a court cannot enjoin the enforcement of criminal law is not based on any distinction between the powers of courts of law as distinguished from courts of equity, but is based on the fact that a criminal prosecution is carried on in the name of the people, and the State may not be made a party defendant.

See *Kent v. The City of Chicago*, 22 N. E. 799, *301 Ill. App. 312.*

And in the case of *Ackerman v. International Longshoremen's & W. Union*, 187 F. (2d) 860, at page 868:

> "That equity will stay its hand in respect to criminal proceedings, always when they are pending, and ordinarily when they are threatened, is a rule of wide and general application under our legal system. It is a rule of the state courts in respect to criminal proceedings in the same or other state courts. Milton Dairy Co. v. Great Northern Ry. Co., 124 Minn. 239, 144 N. W. 764, 49 L. R. A., N. S., 951; State ex rel. Kenamore v. Wood, 155 Mo. 425, 56 S. W. 474, 48 L. R. A. 596. Federal courts apply the same rule when asked to enjoin criminal proceedings in the federal courts. Argonaut Mining Co. v. McPike, 9 Cir. 78 F. (2d) 584; Whitehead v. Cheves, 5 Cir., 67 F. (2d) 316, 317, certiorari denied 290 U. S. 704, 54 S. Ct. 371, 78 L. Ed. 605; Campbell v. Medalie, 2 Cir., 71 F. (2d) 671, certiorari denied 293 U. S. 592, 55 S. Ct. 108, 79 L. Ed. 686. It is a principle expressing a sound policy that the processes of the criminal law should be permitted to reach an orderly conclusion in the criminal courts where they belong.
>
> "But when the demand for an injunction is presented to a federal court, asking an injunction against proceedings in a state or territorial court, the reasons of policy against any such action are multiplied because of the necessity of avoiding whenever possible conflict between the two judicial systems. This policy was stated in Fenner v. Boykin, 271 U. S. 240, 243, 46 S. Ct. 492, 493, 70 L. Ed. 927: 'Ordinarily, there should be no interfer-

ence with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the state, and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of federal questions. An intolerable condition would arise, if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some federal court.'"

Also see *Douglas v. City of Jeannette*, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324, a case in which a number of persons sought to enjoin threatened criminal prosecution under an alleged unconstitutional statute, although the State had not yet commenced such proceedings. The Court denied the requested relief, stating, 319 U. S. at pages 163 and 164, 63 S. Ct. at page 881:

"Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and equitable remedies infringing this independence of the states—though they might otherwise be given—should be withheld if sought on slight or inconsequential grounds. * * *

"It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. Davis & Farnum Mfg. Co. v. (City of) Los Angeles, 189 U. S. 207 (23 S. Ct. 498, 47 L. Ed. 778); Fenner v. Boykin, 271 U. S. 240 (46 S. Ct. 492, 70 L. Ed. 927). Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger of irreparable injury 'both great and immediate.' Spielman Motor (Sales) Co. v. Dodge, 295 U. S. 89, 95 (55 S. Ct. 678, 680, 79 L. Ed. 1322), and cases cited; Beal v. Missouri Pac. R. R. Corp., 312 U. S. 45, 49 (61 S. Ct. 418, 420, 85 L. Ed. 577), and cases cited; Watson v. Buck, 313 U. S. 387 (61 S. Ct. 962, 85 L. Ed. 1416); Williams v. Miller, 317 U. S. 599 (63 S. Ct. 258, 87 L. Ed. 489).

"* * * It does not appear from the record that petitioners have been threatened with any injury

other than that incidental to every criminal proceeding brought lawfully and in good faith, or that a federal court of equity by withdrawing the determination of guilt from the state courts could rightly afford petitioners any protection which they could not secure by prompt trial and appeal pursued to this Court. In these respects the case differs from Hague v. C.I.O., supra, 307 U. S. (496) at pages 501, 502, 59 S. Ct. (954) at pages 957, 958, 83 L. Ed. 1423, where local officials forcibly broke up meetings of the complainants and in many instances forcibly deported them from the state without trial."

Equity is to be invoked only upon a clear showing of both great and immediate irreparable injury.

Fine or imprisonment which might result from continued or a single violation of the statute do not constitute loss or injury within the meaning of the rule above stated. Such results could be avoided by obeying the statute.

The injury or loss which is to be considered is the injury or loss which in the absence of an injunction would result from obeying the statute.

D. **The Relief Sought Herein Was Premature.**

At the outset, appellants point out that any person charged and convicted under the two acts in question would be entitled to a legal remedy, *i. e.*, of appealing such conviction to the highest Court of the State of Louisiana, and to seek writs to the United States Supreme Court if

any of their rights under the Constitution of the United States were violated, or if any other substantial federal question were involved.

A careful reading of the complaint fails to reveal any concrete allegation that any person has been denied any of his rights under the Constitution of the United States, and for this reason appellants strongly urge that the complaint filed herein and the relief sought is premature.

CONCLUSION.

Wherefore, it is respectfully submitted that this Court has jurisdiction of this appeal and it is respectfully suggested that this Court find this case an appropriate one for reversal and dismissal of the complaint.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General, State of Louisiana;
JACK P. F. GREMILLION, Individually;
A. P. TUGWELL,
Treasurer, State of Louisiana;
CARROLL BUCK,
First Assistant Attorney General;
M. E. CULLIGAN,
Assistant Attorney General;
GEORGE M. PONDER,
Assistant Attorney General;
WELDON A. COUSINS,
Assistant Attorney General;
L. K. CLEMENT,
Assistant Attorney General;

JOHN M. CURRIER,
Assistant Attorney General;
GEORGE S. HESNI,
Assistant Attorney General;
ROBERT S. LINK, JR.,
Assistant Attorney General;
DOROTHY N. WOLBRETTE,
Assistant Attorney General;
WILLIAM P. SCHULER,
Assistant Attorney General;
HENRY J. ROBERTS, JR.,
Assistant Attorney General.

PROOF OF SERVICE.

I, Jack P. F. Gremillion, Attorney General for the State of Louisiana and attorney for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of June, 1961, I served copies of the foregoing jurisdictional statement as follows:

To the United States of America by mailing a copy to M. Hepburn Many, Esq., United States Attorney, Federal Building, New Orleans, Louisiana, in a duly addressed envelope with first-class postage prepaid.

JACK P. F. GREMILLION,
Member of the Bar of the Supreme Court
of the United States,
2201 State Capitol Building,
Baton Rouge, Louisiana.

APPENDIX "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 3630

CIVIL ACTION

EARL BENJAMIN BUSH, et al.

Plaintiffs

versus

ORLEANS PARISH SCHOOL BOARD, et al.

Defendants

TEMPORARY INJUNCTION

This case came on for hearing on motions of the United States, amicus curiae, for temporary injunction, restraining the enforcement of Acts 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961.

It being the opinion of this court that all Louisiana statutes which would directly or indirectly require segregation of the races in the public schools, or interfere with the operation of such schools, pursuant to the orders of this court, by the duly elected Orleans Parish School Board, are unconstitutional, in particular, the aforesaid Acts 3 and 5;

IT IS ORDERED that the Honorable Jimmie H. Davis, Governor of Louisiana, the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana, Murphy J. Roden, Director of Public Safety of Louisiana; Richard A. Dowling, District Attorney of Orleans Parish,

Louis A. Heyd, Jr., Criminal Sheriff of Orleans Parish, deLesseps S. Morrison, Mayor of the City of New Orleans, Joseph I. Giarrusso, Superintendent of Police of the City of New Orleans, their successors, agents, and representatives, and all other persons who are acting or may act in concert with them, be, and they are hereby, restrained, enjoined and prohibited from enforcing or seeking to enforce by any means the provisions of Acts 3 and 5 of the Second Extraordinary Session of the Louisiana Legislature for 1961, and from otherwise interfering in any way with the operation of the public schools for the Parish of Orleans by the duly elected Orleans Parish School Board, pursuant to the orders of this court.

IT IS FURTHER ORDERED that copies of this temporary injunction shall be served forthwith upon each of the defendants named herein.

Inasmuch as this temporary injunction is issued on the motions of the United States, no bond is required. 28 U. S. C. # 2408.

s/ RICHARD T. RIVES

RICHARD T. RIVES, Judge
United States Court of Appeals

s/ HERBERT W. CHRISTENBERRY

HERBERT W. CHRISTENBERRY,
Chief Judge
United States District Court

s/ J. SKELLY WRIGHT

J. SKELLY WRIGHT, Judge
United States District Court

Issued May 4, 1961
at New Orleans, Louisiana

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 3630
CIVIL ACTION

EARL BENJAMIN BUSH, et al.
Plaintiffs

versus

ORLEANS PARISH SCHOOL BOARD, et al.
Defendants

M. Hepburn Many, United States Attorney
Attorney for United States of America,
Amicus Curiae

Jack P. F. Gremillion, Louisiana Attorney General
George M. Ponder, Assistant Louisiana
Attorney General

John E. Jackson, Jr., Assistant Louisiana
Attorney General
Attorneys for the State of Louisiana

RIVES, Circuit Judge, and CHRISTENBERRY and WRIGHT, District Judges:

At its last session, officially labeled the Second Extraordinary Session of 1961, and actually the fifth consecutive sitting since November, the Legislature of Louisiana passed, and her Governor approved, two additional measures designed to subvert the effective desegregation of the New Orleans schools and thwart the implementation

of the orders of this court looking to that end.[1] The statutes in question are Acts 3 and 5, the enforcement of which the United States now asks to enjoin.[2]

The legislation takes the form of amendments to the Louisiana Criminal Code. Act 3 purports to create a new crime entitled "Bribery of parents of school children." It punishes giving to, or acceptance by, any parent of "anything of apparent present or prospective value" as an "inducement" to sending his child to a school operated "in violation of any law of this State."[3] The companion

---

[1] For the prior history of this litigation, see **Bush v. Orleans Parish School Board**, E. D. La., 138 F. Supp. 337, affirmed, 242 F. 2d 156; id., 163 F. Supp. 701, affirmed, 268 F. 2d 78; id., 187 F. Supp. 42, affirmed, 365 U. S. 569, id., 188 F. Supp. 916, affirmed, 365 U. S. 569; id., 190 F. Supp. 861; id., ... F. Supp. ..... (3/3/61).

[2] The United States appears as **amicus curiae**. See **Bush v. Orleans Parish School Board**, E. D. La., ... F. Supp. ..... (3/3/61).

[3] The full text of Act 3, as it is proposed to be inserted in the Criminal Code, is as follows:

"§ 119.1. Bribery of parents of school children. Bribery of parents of school children is the giving or offering to give, directly or indirectly, any money, or anything of apparent present or prospective value to any parent, to any tutor or guardian, to any person having legal or actual custody of, or to any person standing in loco parentis to, any child eligible to attend a public school in this State, as an inducement to encourage, influence, prompt, reward or compensate any such person to permit, prompt, force, or cause any such child to attend any such school in violation of any law of this State.

The acceptance of, or the offer to accept, directly or indirectly, any money, or anything of apparent present or prospective value, by any such person under any such circumstances, shall also constitute bribery of parents of school children.

Whoever commits the crime of bribery of parents of school children shall be fined not less than five hundred dollars, nor more than one thousand dollars, and imprisoned for not more than one year.

In the trial of persons charged with bribery of parents of school children, either the bribe-giver or the bribe-taker may

crime announced by Act 5 is labeled "Intimidation and interference in the operation of schools." Here, in rather strange language, the conduct condemned is "the offering to do or doing of any act * * * to" a child or parent, teacher or other school employee, which may influence that person "to do or perform any act in violation of any law of this state."[4] Both statutes grant immunity from

---

give evidence, or make affidavit against the other, with immunity from prosecution in favor of the first informer, except for perjury in giving such testimony.

Any fine imposed and collected from the convicted person or persons under the provisions of this Section shall be paid to the informer or informers who shall give information resulting in the conviction of said person or persons. No penalty imposed under the provisions of this Section shall be suspended or remitted by any court."

[4] Act 5, in pertinent part, reads:

"Section 122.1. Intimidation and interference in the operation of schools.

Intimidation and interference in the operation of public schools is the offering to do or doing of any act, or threatening to do any act, directly or indirectly, to any child enrolled in a public school, to any parent, tutor or guardian, or person having lawful custody of or standing in loco parentis to any such child, the purpose and intent of which is to intimidate, induce, influence, reward, compensate or cause any such person, or any school teacher, school principal, transfer operator, or any other school employee, to do or perform any act in violation of any law of this state.

Whoever commits the crime of intimidation and interference in the operation of schools shall be fined not less than five hundred dollars, nor more than one thousand dollars, and imprisoned for not more than one year.

In the trial of persons charged with public intimidation and interference in the operation of schools, either the person doing or offering to do or the person or persons sought to be influenced, coerced, intimidated, threatened, or forced, may give evidence, or make affidavit against the other, with immunity from prosecution in favor of the first informer, except for perjury in giving such testimony.

Any fine imposed and collected from the convicted person or persons under the provisions of this Section shall be paid to the informer or informers who shall give information resulting in the conviction of said person or persons. No penalty

prosecution and promise a monetary reward to informers.

With commendable frankness, Louisiana's Attorney General admits that these enactments are probably invalid, being too vague and indefinite to define a crime.[5] But he insists that this is neither the time nor the place to challenge them. He would prefer the test to come in a state court after an accused has been arrested, held and charged under authority of the statutes here assailed. Such a person, he argues, would have a better standing to contest the constitutionality of these measures, and, since a ruling striking them down can confidently be predicted from the Louisiana courts, we are urged to spare ourselves this unnecessary chore.

True, "it is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions."[6] Douglas v. Jeannette, 319 U. S. 157, 163. And this principle

---

imposed under the provisions of this Section shall be suspended or remitted by any court."

[5] The principle is well established in Louisiana that a criminal enactment which is so vague and indefinite as to fail properly to inform the public of the conduct sought to be prohibited is null as violative of the Louisiana Constitution of 1921, Article 1, Section 10. See **City of Shreveport v. Moran**, 174 La. 271, 140 So. 475; **State v. Truby**, 211 La. 178, 29 So. 2d 758; **State v. Vallery**, 212 La. 1095, 34 So. 2d 329; **State v. Kraft**, 214 La. 351, 37 So. 2d 815; **City of Shreveport v. Brewer**, 225 La. 93, 72 So. 2d 308; **State v. Murtes**, 232 La. 486, 94 So. 2d 446; **State v. Christine**, 239 La. 259, 118 So. 2d 403 (on rehearing). See also, **State v. Gaster**, 45 La. Ann. 636, 12 So. 739 (decided under similar provisions in the Louisiana Constitution of 1879); **State v. Comeaux**, 131 La. 930, 60 So. 620 (Constitution of 1898); **City of Shreveport v. Wilson**, 145 La. 906, 83 So. 186 (Constitution of 1913).
The Federal Constitution likewise guarantees against vagueness in the state criminal laws. See **Winters v. New York**, 333 U. S. 507.

[6] Of course, since no prosecution is now pending in the state courts, the prohibition of 28 U.S.C. §2283 does not apply. Nor does the

has special force when application is made to a federal court to enjoin the enforcement of state criminal statutes, for then considerations of comity add their weight to suggest abstention. Beal v. Missouri Pacific R. Co., 312 U. S. 45, 49-50. See also, Harrison v. N.A.A.C.P., 360 U. S. 167. But the rule cannot be applied mechanically. N.A.A.C.P. v. Bennett, 360 U. S. 471; cf. Doud v. Hodge, 350 U. S. 485. Special circumstances will sometimes compel a federal court to act. Truax v. Raich, 239 U. S. 33; Pierce v. Society of Sisters, 268 U. S. 510; Hague v. C.I.O., 307 U. S. 496; see Terrace v. Thompson, 263 U. S. 197, 214; Packard v. Banton, 264 U. S. 140, 143; Spielman Motor Co. v. Dodge, 295 U. S. 89, 95; Beal v. Missouri Pacific R. Co., supra, 50; Douglas v. Jeannette, supra, 163; Denton v. City of Carrollton, Georgia, 5 Cir., 235 F. (2d) 481, 484-485. This is such a case.

The challenged statutes are not ordinary criminal provisions. They constitute special legislation, passed as "emergency."[7] measures to accomplish a specific purpose. Placed in context, their mission is all too clear. These are the invidious weapons of a state administration dedicated to scuttling the modest program of desegregation which has been initiated in Orleans Parish. The plain intent of the measures is to publish a threat of imprisonment against all who would have any dealings with an integrated school. Whether or not prosecution is ever attempted under these provisions, the obvious hope of the

---

rule that federal courts will not intervene to assure respect for procedural due process in the conduct of a state criminal trial.

[7] Acts 3 and 5 were both certified by the Governor as "emergency legislation" under Art. 3, §27, of the Louisiana Constitution. The effect of this certification is to dispense with the normal delays and make the measure effective immediately upon the Governor's approval.

sponsors is that the mere promulgation of the statutes will accomplish the desired end. Thus, the effect is immediate. The harm has already begun. In these circumstances, there can be no question of postponing decision.

Nor can there be any doubt as to the unconstitutionality of these acts. They are revealed as but another effort to circumvent the orders of the court issued pursuant to the mandate of Brown v. Board of Education, 347 U. S. 483.[8] Constitutionally unable to require racial segregation in the public schools, arrested in its plan to close the integrated schools, and unsuccessful in its boycott of these schools by other means, the State has now marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club.

It is argued, however, that we read too much in the statutes. We are told that these laws have no connection with segregation; that the reference to schools operated "in violation of any law of this State" does not mean desegregated schools. It cannot be, so the argument goes, because this court has voided all laws requiring or permitting segregation of the races in public education.

Of course, the circumstances under which these measures were adopted belie any such claim of innocence. The Legislature clearly wants parents and teachers, and other interested persons, to understand that they will be punished if they have any contact with an integrated school. Yet, it would play tricks with the court and pretend it had meant nothing of the kind. "But courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of the State, but they

[8] See Bush v. Orleans Parish School Board, E. D. La., 188 F. Supp. 916; id., F. Supp. (3/3/61).

will not ignore the effect of its action." Graham v. Folsom, 200 U. S. 248, 253. Moreover, in this instance, the Legislature has explained its meaning for all to hear. We need not probe the public mind to learn what was intended by "the law of the State." We have but to listen to its official voice to learn that "the law of the State" is Louisiana legislation for segregation.

Thus, in the acts of the First Extraordinary Session of 1960 providing for the closure or boycott of desegregated schools, the euphemism "operated contrary to the Constitution and laws of this State" was used to describe the offending facilities.[9] There was no doubt then what was intended, and there can be less now after the constant reiteration of that chant. It is true these statutes were voided on November 30, 1960,[10] but the Legislature did not acquiesce in this ruling. On the contrary, shortly after the decision, it solemnly proclaimed that: "the public policy of the State of Louisiana, as expressed and declared in Act No. 2 of the First Extraordinary Session of 1960, and in all other Acts and Resolutions declaring, establishing and implementing the public policy of this State in respect to interposition and segregation of the races in the public school system, be and said public policy is hereby REAFFIRMED and again declared to be the public policy of the State of Louisiana." H. Conc. Res. 26, 2d Ex. Sess. 1960. Accordingly, we must assume that "laws of the State" means here what it meant there.

Nor is this all. Twice during the Second Extraordinary Session of 1960 the Legislature commended

[9] For a catalog of these statutes, see **Bush v. Orleans Parish School Board**, E. D. La., 188 F. Supp. 916, 936, Appendix B.

[10] **Bush v. Orleans Parish School Board**, E. D. La., 188 F. Supp. 916, affirmed, 365 U. S. 569.

parents who had withdrawn their children from the two desegregated schools of New Orleans, specifically declaring that they were thereby demonstrating "their will to support the constitution and laws of this state." H. Conc. Res. 1 and S. Conc. Res. 1, 2d Ex. Sess. 1960. Similarly, in a later resolution defending its own officers cited for contempt for refusing to authorize payment of teachers at these two schools, it asserted such payments "would have been in violation of the Constitution and laws of the State of Louisiana." H. Conc. Res. 8, 3d Ex. Sess. 1960. And, finally, during the very session at which the statutes in suit were passed, the Legislature formally proclaimed its view that the two desegregated schools of New Orleans were "operating in violation of the provisions and principles of the State Constitution and laws * * *." H. Conc. Res. 22, 2d Ex. Sess. 1961.

The subterfuge will not avail. Unmasked for what they are, Acts 3 and 5 are unconstitutional on their face and must be enjoined.

s/ RICHARD T. RIVES

RICHARD T. RIVES, Judge
United States Court of Appeals

s/ HERBERT W. CHRISTENBERRY,

HERBERT W. CHRISTENBERRY,
Chief Judge
United States District Court

s/ J. SKELLY WRIGHT

J. SKELLY WRIGHT, Judge
United States District Court

New Orleans, Louisiana
May 4, 1961

APPENDIX "B"

Act 3 ACTS OF 1961 SECOND EXTRA SESSION BRIBERY OF PARENTS OF SCHOOL CHILDREN ACT 3

HOUSE BILL NO. 2

An Act to amend Title 14 of the Louisiana Revised Statutes of 1950 by adding thereto a new Section to be designated as R.S. 14:119.1, relative to bribery of parents of school children; to define such bribery and to provide criminal penalties therefor; to provide immunity from prosecution for persons informing, giving evidence, or making affidavit against other persons in connection therewith; to provide that fines imposed and collected from persons convicted of such bribery shall be paid to informers who shall give information resulting in the conviction of said person or persons; and to provide that penalties imposed under this Act shall not be suspended or remitted.

Be it enacted by the Legislature of Louisiana:

Section 1.

That Section 119.1 of Title 14 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

§ 119.1. Bribery of parents of school children

Bribery of parents of school children is the giving or offering to give, directly or indirectly, any money, or anything of apparent present or prospective value to any parent, to any tutor or guardian, to any person having legal or actual custody of, or to any person standing in loco parentis to, any child eligible to attend a public school in this State, as an inducement to encourage, influence, prompt, reward or compensate any such person to permit, prompt, force, or cause any such child to attend any such school in violation of any law of this State.

The acceptance of, or the offer to accept, directly or indirectly, any money, or anything of apparent present or prospective value, by any such person under any such circumstances, shall also constitute bribery of parents of school children.

Whoever commits the crime of bribery of parents of school children shall be fined not less than five hundred dollars, nor more than one thousand dollars, and imprisoned for not more than one year.

In the trial of persons charged with bribery of parents of school children, either the bribe-giver or the bribe-taker may give evidence, or make affidavit against the other, with immunity from prosecution in favor of the first informer, except for perjury in giving such testimony.

Any fine imposed and collected from the convicted person or persons under the provisions of this Section shall be paid to the informer or informers who shall give

information resulting in the conviction of said person or persons. No penalty imposed under the provisions of this Section shall be suspended or remitted by any court.

Section 2.

The necessity for the immediate passage of this Act having been certified by the Governor to the Legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor.

Approved: February 20, 1961 at 11:36 A.M.

APPENDIX "C"

Act 5 ACTS OF 1961 SECOND EXTRA SESSION SCHOOLS — INTIMIDATION AND INTERFERENCE IN OPERATION

ACT 5

HOUSE BILL NO. 4

An Act to amend Title 14 of the Louisiana Revised Statutes of 1950 by adding thereto a new Section to be designated as R.S. 14:122.1, relative to acts of intimidation and interference in the orderly functioning of the public schools of Louisiana, to define such acts of intimidation and interference in the operation of the public schools, to provide criminal penalties therefor, to provide immunity from prosecution for persons informing, giving evidence, or making affidavit against other persons in connection therewith; to provide that fines imposed and collected from persons convicted of such acts of intimidation and interference shall be paid to informers who shall give information resulting in the conviction of said person or persons; and to provide that penalties imposed under this Act shall not be suspended or remitted.

Be it enacted by the Legislature of Louisiana:

Section 1.

That Section 122.1 of Title 14 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

Section 122.1. Intimidation and interference in the operation of schools.

Intimidation and interference in the operation of public schools is the offering to do or doing of any act, or threatening to do any act, directly or indirectly, to any child enrolled in a public school, to any parent, tutor or guardian, or person having lawful custody of or standing in loco parentis to any such child, the purpose and intent of which is to intimidate, induce, influence, reward, compensate or cause any such person, or any school teacher, school principal, transfer operator, or any other school employee, to do or perform any act in violation of any law of this state.

Whoever commits the crime of intimidation and interference in the operation of schools shall be fined not less than five hundred dollars, nor more than one thousand dollars, and imprisoned for not more than one year.

In the trial of persons charged with public intimidation and interference in the operation of schools, either the person doing or offering to do or the person or persons sought to be influenced, coerced, intimidated, threatened, or forced, may give evidence, or make affidavit against the other, with immunity from prosecution in favor of the first informer, except for perjury in giving such testimony.

Any fine imposed and collected from the convicted person or persons under the provisions of this Section shall be paid to the informer or informers who shall give information resulting in the conviction of said person or persons. No penalty imposed under the provisions of this Section shall be suspended or remitted by any court.

Section 2.

The necessity for the immediate passage of this Act having been certified by the Governor to the Legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor.

Approved: February 20, 1961 at 11:38 A.M.